IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 39 of 1990

Date of decision: 4.4.2007

The Commissioner of Income-tax, Jalandhar ...Petitioner

Versus

Shri Mangal Sain, Model Town, Hoshiarpur ...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Vivek Sethi, Advocate, for
Mr. Sanjiv Bansal, Advocate for the revenue.

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RAJESH BINDAL, J.

The following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal) arising out of its order dated 26.5.1980 passed in ITA No.518(ASR)/1978-79 for the assessment year 1971-72:-

> "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that what is the period of default after the issuance of notice u/s 148, when the assessee has furnished no return suo motu u/s 139 (1) is a debatable issue and therefore, the Income-tax Officer had no jurisdiction to act u/s 154?"

Briefly the facts, as noticed in the statement of case, are that the assessee did not file his return of income for the assessment year in question, accordingly, a notice under Section 148 of the Income Tax Act, 1961 (for short 'the Act') was issued. Even in response to the notice under Section 148 of the Act, the return was belated. At the time of completion of assessment, the assessing officer directed for charging of interest under Section 139(8) of the Act, which was duly paid by the assessee. Finding that the interest levied under Section 139(8) of the Act was charged for

lesser period, a notice under Section 154 of the Act was issued and the assessing officer vide order dated February 21, 1977 rectified the order and raised an additional demand of interest of Rs. 21,706/-. The assessee, having failed in appeal before the Appellate Assistant Commissioner of Income Tax, succeeded before the Tribunal, where it was held that the issue of levy of interest under Section 139(8) of the Act being debatable at the relevant time, the proceedings under Section 154 of the Act could not be resorted to.

Having heard learned counsel for the revenue, we find that the view expressed by the Tribunal is in conformity with the law. This Court in **Commissioner of Income-tax Vs. Smt. Sushma Saxena (1997) 223 ITR 395,** while referring to earlier judgment of this court and also the views expressed by other Courts on the issue, had held that prior to insertion of explanation 2 to Section 139(8) of the Act, interest could not be charged under Section 139(8) of the Act in case of re-assessment under Section 147 of the Act. Though this view was lateron reversed by Hon'ble the Supreme Court in **K. Govindan and Sons Vs. Commissoner of Income-tax (2001) 247 ITR 192.** In Govindan's case (supra), Hon'ble the Supreme Court reversed the judgment of Gauhati High Court in **Commissioner of Income-tax Vs. Triple Crown Agencies (1993) 204 ITR 377** and the judgment of this Court in **Smt. Sushma Saxena's** case (Supra), whereas the views expressed by some other High Courts were approved. This clearly shows that at the relevant time, issue was not free from doubt. Once that is so, the provisions of Section 154 of the Act could not be resorted to.

Accordingly, the question is answered against the revenue and in favour of the assessee.

The reference is disposed of, accordingly.

(Rajesh Bindal)
Judge

April 04 , 2007 **(M.M.Kumar)**
Pka **Judge**